

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 195 of 1998

in

SPECIAL CIVIL APPLICATION No 4932 of 1992

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BISMILAKHANJI MOHMEDKHANJI

Versus

THE STATE OF GUJARAT

Appearance:

MR GC MAZMUDAR for Appellants
NOTICE SERVED for Respondent No. 1, 2

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 18/10/1999

ORAL JUDGEMENT

(per Thakkar, Actg.C.J)

1. This appeal is filed against the order rejecting Miscellaneous Civil Application No.2379 of 1997 in Special Civil Application No.4932 of 1992 rejecting the Miscellaneous Civil Application No.2379 of 1997 on 19.12.1997. That Miscellaneous Civil Application was filed in Special Civil Application No.4932 of 1992 which was dismissed for default on 9.12.1997.

2. The matter is of 1992. It appears that many a times it had come on board and as observed by the learned Single Judge the learned advocate for petitioner "constantly" remained absent by sending leave notes. In fact on 11.3.1994 the court noticed the fact that matter was kept for admission and even on the adjourned date none remained present. It was dismissed for default. It was, however, restored on prayer made by the learned advocate for petitioner, but again, the learned advocate for petitioner remained absent by filing similar note and the matter was dismissed for default. Miscellaneous Civil Application to recall the said order also came to be rejected.

3. We have heard the learned advocates for parties today. In the facts and circumstances, in our opinion, in the larger interest to see that due to mistake or negligence on the part of the appellants' counsel the litigant may not suffer, we are allowing the Letters Patent Appeal by setting aside the order passed in Miscellaneous Civil Application as well as Special Civil Application. In the facts and circumstances, however, we are of the opinion that it would be proper if we direct the appellants to pay costs of Rs.2,500/- which will be paid to the Legal Aid Committee. Appeal is allowed accordingly. The orders passed in Miscellaneous Civil Application No.2379 of 1997 and Special Civil Application No.4932 of 1992 are hereby set aside. Office will now place the main matter before appropriate court taking up such matters. We may state that we are expressing no opinion on merits and as and when the matter is placed before the learned Single Judge it will be decided on merits. We may, however, direct the office to place the main matter for admission only after the above payment is made. Appeal is allowed accordingly.